

JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DLI PROPERTIES, LLC,	)	Case No. ED CV 17-198-JGB (SPx)
Plaintiff,	)	
vs.	)	ORDER SUMMARILY REMANDING
	)	IMPROPERLY-REMOVED ACTION
ROBERT G. TOLER III, et al.,	)	
Defendants.	)	

The Court will remand this action to state court summarily because defendant removed it improperly.

On February 3, 2017, defendant Robert G. Toler III, having been sued in what – so far as the Court can tell – appears to be an unlawful detainer action in California Superior Court for Los Angeles County, filed a Notice of Removal of that action to this Court. There are defects in the removal process defendant employed, and it appears there is no basis for this Court’s jurisdiction in any event.

First, defendant failed to attach to his Notice of Removal “a copy of all process, pleadings, and orders served upon such defendant” in the state action, as required for removal to be effective. *See* 28 U.S.C. § 1446(a). In particular, he did not attach a copy of the complaint, but instead attached only his Notice of

1 Filing Notice of Removal to Federal Court, which defendant apparently filed in  
2 the state action. Thus, the only indication the Court has about the nature of the  
3 underlying state action is from defendant's hints about the nature of the case in his  
4 Notice of Removal.<sup>1</sup> Defendant's failure to attach a copy of the complaint renders  
5 the removal defective and, by itself, warrants remand.

6 Second, because the complaint is missing, the Court cannot verify  
7 defendant's allegations supporting diversity or federal question jurisdiction, and  
8 there are reasons to question those allegations. Defendant principally asserts  
9 diversity jurisdiction as his basis for removal. *See* 28 U.S.C. § 1332. But even  
10 accepting defendant's allegations of diversity of citizenship, his claim that the  
11 amount in controversy "more likely than not exceeds \$75,000" is suspect. *See*  
12 Notice of Removal at 3. Defendant asserts plaintiff does not quantify the amount  
13 in controversy, but the amount likely exceeds \$75,000 based on plaintiff's claims.  
14 Defendant fails to identify those claims, but given that defendant states he  
15 currently has a pending cross-complaint against plaintiff for wrongful foreclosure,  
16 it appears likely the case defendant removed is an unlawful detainer action, which  
17 is unlikely to have more than \$75,000 in controversy. Defendant also suggests  
18 federal question jurisdiction as his basis for removal. *See* 28 U.S.C. § 1331. But  
19 although he states the case is based on the Fair Debt Collection Practices Act, this  
20 makes little sense given that he is being sued by a property company and the other  
21 assertions defendant makes about the case. It appears defendant is in fact  
22 asserting his own defense case raises federal questions. "A defense that raises a  
23 federal question is inadequate to confer federal jurisdiction." *Merrell Dow Pharm.*  
24 *Inc. v. Thompson*, 478 U.S. 804, 808, 106 S. Ct. 3229, 92 L. Ed. 2d 650 (1986);

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27 <sup>1</sup> The Court attempted to look up the Los Angeles Superior Court's  
28 records of the case, No. 16F05606, but was unable to locate it on the court's  
website (<http://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil>).

1 accord *More-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1244 (9th Cir. 2009). Any  
2 federal claim must arise in the underlying complaint in order to invoke federal  
3 jurisdiction. See *Merrell Dow*, 478 U.S. at 808 (“the question for removal  
4 jurisdiction must . . . be determined by reference to the ‘well-pleaded complaint’”).

5 In light of these defects, on February 6, 2017, the Court issued an Order  
6 denying defendant’s request to proceed in forma pauperis (“IFP”), and giving him  
7 30 days to either pay the filing fees in full or file an amended IFP application, and  
8 warned him the case would be dismissed if he failed to do so. Defendant failed to  
9 do either. As such, the Court presumes it lacks jurisdiction, and in any event the  
10 case cannot proceed in this Court.

11 Accordingly, IT IS ORDERED that: (1) this matter be REMANDED to the  
12 Superior Court of California for Los Angeles County for procedural defects and  
13 lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1447(c); and (2) the  
14 Clerk send a certified copy of this Order to the state court.

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17 DATED: March 14, 2017

  
HONORABLE JESUS G. BERNAL  
UNITED STATES DISTRICT JUDGE

18  
19 Presented by:

20   
21 Sheri Pym  
22 United States Magistrate Judge  
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